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HOUSE BILL 3254

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi, and Roberts

Read first time 01/25/08. Referred to Committee on Judiciary.

1            AN ACT Relating to accountability for persons driving under the  
2 influence of intoxicating liquor or drugs; amending RCW 46.20.342,  
3 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740, and 46.61.5055;  
4 reenacting and amending RCW 46.20.308 and 46.63.020; adding a new  
5 section to chapter 46.04 RCW; adding a new section to chapter 46.68  
6 RCW; adding new sections to chapter 46.20 RCW; and providing an  
7 effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9            NEW SECTION.    **Sec. 1.** A new section is added to chapter 46.04 RCW  
10 to read as follows:

11            "Ignition interlock driver's license" means a permit issued to a  
12 person by the department that allows the person to operate a  
13 noncommercial motor vehicle with an ignition interlock device while the  
14 person's regular driver's license is suspended, revoked, or denied.

15            **Sec. 2.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are  
16 each reenacted and amended to read as follows:

17            (1) Any person who operates a motor vehicle within this state is  
18 deemed to have given consent, subject to the provisions of RCW

1 46.61.506, to a test or tests of his or her breath or blood for the  
2 purpose of determining the alcohol concentration or presence of any  
3 drug in his or her breath or blood if arrested for any offense where,  
4 at the time of the arrest, the arresting officer has reasonable grounds  
5 to believe the person had been driving or was in actual physical  
6 control of a motor vehicle while under the influence of intoxicating  
7 liquor or any drug or was in violation of RCW 46.61.503. Neither  
8 consent nor this section precludes a police officer from obtaining a  
9 search warrant for a person's breath or blood.

10 (2) The test or tests of breath shall be administered at the  
11 direction of a law enforcement officer having reasonable grounds to  
12 believe the person to have been driving or in actual physical control  
13 of a motor vehicle within this state while under the influence of  
14 intoxicating liquor or any drug or the person to have been driving or  
15 in actual physical control of a motor vehicle while having alcohol in  
16 a concentration in violation of RCW 46.61.503 in his or her system and  
17 being under the age of twenty-one. However, in those instances where  
18 the person is incapable due to physical injury, physical incapacity, or  
19 other physical limitation, of providing a breath sample or where the  
20 person is being treated in a hospital, clinic, doctor's office,  
21 emergency medical vehicle, ambulance, or other similar facility or  
22 where the officer has reasonable grounds to believe that the person is  
23 under the influence of a drug, a blood test shall be administered by a  
24 qualified person as provided in RCW 46.61.506(5). The officer shall  
25 inform the person of his or her right to refuse the breath or blood  
26 test, and of his or her right to have additional tests administered by  
27 any qualified person of his or her choosing as provided in RCW  
28 46.61.506. The officer shall warn the driver, in substantially the  
29 following language, that:

30 (a) If the driver refuses to take the test, the driver's license,  
31 permit, or privilege to drive will be revoked or denied for at least  
32 one year; and

33 (b) If the driver refuses to take the test, the driver's refusal to  
34 take the test may be used in a criminal trial; and

35 (c) If the driver submits to the test and the test is administered,  
36 the driver's license, permit, or privilege to drive will be suspended,  
37 revoked, or denied for at least ninety days if the driver is age  
38 twenty-one or over and the test indicates the alcohol concentration of

1 the driver's breath or blood is 0.08 or more, or if the driver is under  
2 age twenty-one and the test indicates the alcohol concentration of the  
3 driver's breath or blood is 0.02 or more, or if the driver is under age  
4 twenty-one and the driver is in violation of RCW 46.61.502 or  
5 46.61.504; and

6 (d) If the driver's license, permit, or privilege to drive is  
7 suspended, revoked, or denied the driver may be eligible to immediately  
8 apply for an ignition interlock driver's license.

9 (3) Except as provided in this section, the test administered shall  
10 be of the breath only. If an individual is unconscious or is under  
11 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
12 or vehicular assault as provided in RCW 46.61.522, or if an individual  
13 is under arrest for the crime of driving while under the influence of  
14 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
15 results from an accident in which there has been serious bodily injury  
16 to another person, a breath or blood test may be administered without  
17 the consent of the individual so arrested.

18 (4) Any person who is dead, unconscious, or who is otherwise in a  
19 condition rendering him or her incapable of refusal, shall be deemed  
20 not to have withdrawn the consent provided by subsection (1) of this  
21 section and the test or tests may be administered, subject to the  
22 provisions of RCW 46.61.506, and the person shall be deemed to have  
23 received the warnings required under subsection (2) of this section.

24 (5) If, following his or her arrest and receipt of warnings under  
25 subsection (2) of this section, the person arrested refuses upon the  
26 request of a law enforcement officer to submit to a test or tests of  
27 his or her breath or blood, no test shall be given except as authorized  
28 under subsection (3) or (4) of this section.

29 (6) If, after arrest and after the other applicable conditions and  
30 requirements of this section have been satisfied, a test or tests of  
31 the person's blood or breath is administered and the test results  
32 indicate that the alcohol concentration of the person's breath or blood  
33 is 0.08 or more if the person is age twenty-one or over, or 0.02 or  
34 more if the person is under the age of twenty-one, or the person  
35 refuses to submit to a test, the arresting officer or other law  
36 enforcement officer at whose direction any test has been given, or the  
37 department, where applicable, if the arrest results in a test of the  
38 person's blood, shall:

1 (a) Serve notice in writing on the person on behalf of the  
2 department of its intention to suspend, revoke, or deny the person's  
3 license, permit, or privilege to drive as required by subsection (7) of  
4 this section;

5 (b) Serve notice in writing on the person on behalf of the  
6 department of his or her right to a hearing, specifying the steps he or  
7 she must take to obtain a hearing as provided by subsection (8) of this  
8 section and that the person waives the right to a hearing if he or she  
9 receives an ignition interlock driver's license;

10 (c) Mark the person's Washington state driver's license or permit  
11 to drive, if any, in a manner authorized by the department;

12 (d) Serve notice in writing that the marked license or permit, if  
13 any, is a temporary license that is valid for sixty days from the date  
14 of arrest or from the date notice has been given in the event notice is  
15 given by the department following a blood test, or until the  
16 suspension, revocation, or denial of the person's license, permit, or  
17 privilege to drive is sustained at a hearing pursuant to subsection (8)  
18 of this section, whichever occurs first. No temporary license is valid  
19 to any greater degree than the license or permit that it replaces; and

20 (e) Immediately notify the department of the arrest and transmit to  
21 the department within seventy-two hours, except as delayed as the  
22 result of a blood test, a sworn report or report under a declaration  
23 authorized by RCW 9A.72.085 that states:

24 (i) That the officer had reasonable grounds to believe the arrested  
25 person had been driving or was in actual physical control of a motor  
26 vehicle within this state while under the influence of intoxicating  
27 liquor or drugs, or both, or was under the age of twenty-one years and  
28 had been driving or was in actual physical control of a motor vehicle  
29 while having an alcohol concentration in violation of RCW 46.61.503;

30 (ii) That after receipt of the warnings required by subsection (2)  
31 of this section the person refused to submit to a test of his or her  
32 blood or breath, or a test was administered and the results indicated  
33 that the alcohol concentration of the person's breath or blood was 0.08  
34 or more if the person is age twenty-one or over, or was 0.02 or more if  
35 the person is under the age of twenty-one; and

36 (iii) Any other information that the director may require by rule.

37 (7) The department of licensing, upon the receipt of a sworn report  
38 or report under a declaration authorized by RCW 9A.72.085 under

1 subsection (6)(e) of this section, shall suspend, revoke, or deny the  
2 person's license, permit, or privilege to drive or any nonresident  
3 operating privilege, as provided in RCW 46.20.3101, such suspension,  
4 revocation, or denial to be effective beginning sixty days from the  
5 date of arrest or from the date notice has been given in the event  
6 notice is given by the department following a blood test, or when  
7 sustained at a hearing pursuant to subsection (8) of this section,  
8 whichever occurs first.

9 (8) A person receiving notification under subsection (6)(b) of this  
10 section may, within (~~(thirty)~~) twenty days after the notice has been  
11 given, request in writing a formal hearing before the department. The  
12 person shall pay a fee of two hundred dollars as part of the request.  
13 If the request is mailed, it must be postmarked within (~~(thirty)~~)  
14 twenty days after receipt of the notification. Upon timely receipt of  
15 such a request for a formal hearing, including receipt of the required  
16 two hundred dollar fee, the department shall afford the person an  
17 opportunity for a hearing. The department may waive the required two  
18 hundred dollar fee if the person is an indigent as defined in RCW  
19 10.101.010. Except as otherwise provided in this section, the hearing  
20 is subject to and shall be scheduled and conducted in accordance with  
21 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the  
22 county of the arrest, except that all or part of the hearing may, at  
23 the discretion of the department, be conducted by telephone or other  
24 electronic means. The hearing shall be held within sixty days  
25 following the arrest or following the date notice has been given in the  
26 event notice is given by the department following a blood test, unless  
27 otherwise agreed to by the department and the person, in which case the  
28 action by the department shall be stayed, and any valid temporary  
29 license marked under subsection (6)(c) of this section extended, if the  
30 person is otherwise eligible for licensing. For the purposes of this  
31 section, the scope of the hearing shall cover the issues of whether a  
32 law enforcement officer had reasonable grounds to believe the person  
33 had been driving or was in actual physical control of a motor vehicle  
34 within this state while under the influence of intoxicating liquor or  
35 any drug or had been driving or was in actual physical control of a  
36 motor vehicle within this state while having alcohol in his or her  
37 system in a concentration of 0.02 or more if the person was under the  
38 age of twenty-one, whether the person was placed under arrest, and (a)

1 whether the person refused to submit to the test or tests upon request  
2 of the officer after having been informed that such refusal would  
3 result in the revocation of the person's license, permit, or privilege  
4 to drive, or (b) if a test or tests were administered, whether the  
5 applicable requirements of this section were satisfied before the  
6 administration of the test or tests, whether the person submitted to  
7 the test or tests, or whether a test was administered without express  
8 consent as permitted under this section, and whether the test or tests  
9 indicated that the alcohol concentration of the person's breath or  
10 blood was 0.08 or more if the person was age twenty-one or over at the  
11 time of the arrest, or 0.02 or more if the person was under the age of  
12 twenty-one at the time of the arrest. The sworn report or report under  
13 a declaration authorized by RCW 9A.72.085 submitted by a law  
14 enforcement officer is prima facie evidence that the officer had  
15 reasonable grounds to believe the person had been driving or was in  
16 actual physical control of a motor vehicle within this state while  
17 under the influence of intoxicating liquor or drugs, or both, or the  
18 person had been driving or was in actual physical control of a motor  
19 vehicle within this state while having alcohol in his or her system in  
20 a concentration of 0.02 or more and was under the age of twenty-one and  
21 that the officer complied with the requirements of this section.

22 A hearing officer shall conduct the hearing, may issue subpoenas  
23 for the attendance of witnesses and the production of documents, and  
24 shall administer oaths to witnesses. The hearing officer shall not  
25 issue a subpoena for the attendance of a witness at the request of the  
26 person unless the request is accompanied by the fee required by RCW  
27 5.56.010 for a witness in district court. The sworn report or report  
28 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
29 officer and any other evidence accompanying the report shall be  
30 admissible without further evidentiary foundation and the  
31 certifications authorized by the criminal rules for courts of limited  
32 jurisdiction shall be admissible without further evidentiary  
33 foundation. The person may be represented by counsel, may question  
34 witnesses, may present evidence, and may testify. The department shall  
35 order that the suspension, revocation, or denial either be rescinded or  
36 sustained.

37 (9) If the suspension, revocation, or denial is sustained after  
38 such a hearing, the person whose license, privilege, or permit is

1 suspended, revoked, or denied has the right to file a petition in the  
2 superior court of the county of arrest to review the final order of  
3 revocation by the department in the same manner as an appeal from a  
4 decision of a court of limited jurisdiction. Notice of appeal must be  
5 filed within thirty days after the date the final order is served or  
6 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
7 1.1, or other statutes or rules referencing de novo review, the appeal  
8 shall be limited to a review of the record of the administrative  
9 hearing. The appellant must pay the costs associated with obtaining  
10 the record of the hearing before the hearing officer. The filing of  
11 the appeal does not stay the effective date of the suspension,  
12 revocation, or denial. A petition filed under this subsection must  
13 include the petitioner's grounds for requesting review. Upon granting  
14 petitioner's request for review, the court shall review the  
15 department's final order of suspension, revocation, or denial as  
16 expeditiously as possible. The review must be limited to a  
17 determination of whether the department has committed any errors of  
18 law. The superior court shall accept those factual determinations  
19 supported by substantial evidence in the record: (a) That were  
20 expressly made by the department; or (b) that may reasonably be  
21 inferred from the final order of the department. The superior court  
22 may reverse, affirm, or modify the decision of the department or remand  
23 the case back to the department for further proceedings. The decision  
24 of the superior court must be in writing and filed in the clerk's  
25 office with the other papers in the case. The court shall state the  
26 reasons for the decision. If judicial relief is sought for a stay or  
27 other temporary remedy from the department's action, the court shall  
28 not grant such relief unless the court finds that the appellant is  
29 likely to prevail in the appeal and that without a stay the appellant  
30 will suffer irreparable injury. If the court stays the suspension,  
31 revocation, or denial it may impose conditions on such stay.

32 (10)(a) If a person whose driver's license, permit, or privilege to  
33 drive has been or will be suspended, revoked, or denied under  
34 subsection (7) of this section, other than as a result of a breath or  
35 blood test refusal, and who has not committed an offense for which he  
36 or she was granted a deferred prosecution under chapter 10.05 RCW,  
37 petitions a court for a deferred prosecution on criminal charges  
38 arising out of the arrest for which action has been or will be taken

1 under subsection (7) of this section, or notifies the department of  
2 licensing of the intent to seek such a deferred prosecution, then the  
3 license suspension or revocation shall be stayed pending entry of the  
4 deferred prosecution. The stay shall not be longer than one hundred  
5 fifty days after the date charges are filed, or two years after the  
6 date of the arrest, whichever time period is shorter. If the court  
7 stays the suspension, revocation, or denial, it may impose conditions  
8 on such stay. If the person is otherwise eligible for licensing, the  
9 department shall issue a temporary license, or extend any valid  
10 temporary license marked under subsection (6) of this section, for the  
11 period of the stay. If a deferred prosecution treatment plan is not  
12 recommended in the report made under RCW 10.05.050, or if treatment is  
13 rejected by the court, or if the person declines to accept an offered  
14 treatment plan, or if the person violates any condition imposed by the  
15 court, then the court shall immediately direct the department to cancel  
16 the stay and any temporary marked license or extension of a temporary  
17 license issued under this subsection.

18 (b) A suspension, revocation, or denial imposed under this section,  
19 other than as a result of a breath or blood test refusal, shall be  
20 stayed if the person is accepted for deferred prosecution as provided  
21 in chapter 10.05 RCW for the incident upon which the suspension,  
22 revocation, or denial is based. If the deferred prosecution is  
23 terminated, the stay shall be lifted and the suspension, revocation, or  
24 denial reinstated. If the deferred prosecution is completed, the stay  
25 shall be lifted and the suspension, revocation, or denial canceled.

26 (c) The provisions of (b) of this subsection relating to a stay of  
27 a suspension, revocation, or denial and the cancellation of any  
28 suspension, revocation, or denial do not apply to the suspension,  
29 revocation, denial, or disqualification of a person's commercial  
30 driver's license or privilege to operate a commercial motor vehicle.

31 (11) When it has been finally determined under the procedures of  
32 this section that a nonresident's privilege to operate a motor vehicle  
33 in this state has been suspended, revoked, or denied, the department  
34 shall give information in writing of the action taken to the motor  
35 vehicle administrator of the state of the person's residence and of any  
36 state in which he or she has a license.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 46.68 RCW  
2 to read as follows:

3        The ignition interlock device revolving fund is created in the  
4 custody of the state treasurer to assist in covering the monetary costs  
5 of installing, removing, and leasing an ignition interlock device for  
6 indigent people who are required under section 8 of this act and RCW  
7 46.61.5055 to install an ignition interlock device in all vehicles  
8 owned or operated by the person. The director, or his or her designee,  
9 is authorized to expend money from the ignition interlock device  
10 revolving fund. The account is subject to allotment procedures under  
11 chapter 43.88 RCW, but an appropriation is not required for  
12 expenditures.

13        **Sec. 4.**    RCW 46.20.342 and 2004 c 95 s 5 are each amended to read  
14 as follows:

15        (1) It is unlawful for any person to drive a motor vehicle in this  
16 state while that person is in a suspended or revoked status or when his  
17 or her privilege to drive is suspended or revoked in this or any other  
18 state. Any person who has a valid Washington driver's license is not  
19 guilty of a violation of this section.

20        (a) A person found to be an habitual offender under chapter 46.65  
21 RCW, who violates this section while an order of revocation issued  
22 under chapter 46.65 RCW prohibiting such operation is in effect, is  
23 guilty of driving while license suspended or revoked in the first  
24 degree, a gross misdemeanor. Upon the first such conviction, the  
25 person shall be punished by imprisonment for not less than ten days.  
26 Upon the second conviction, the person shall be punished by  
27 imprisonment for not less than ninety days. Upon the third or  
28 subsequent conviction, the person shall be punished by imprisonment for  
29 not less than one hundred eighty days. If the person is also convicted  
30 of the offense defined in RCW 46.61.502 or 46.61.504, when both  
31 convictions arise from the same event, the minimum sentence of  
32 confinement shall be not less than ninety days. The minimum sentence  
33 of confinement required shall not be suspended or deferred. A  
34 conviction under this subsection does not prevent a person from  
35 petitioning for reinstatement as provided by RCW 46.65.080.

36        (b) A person who violates this section while an order of suspension  
37 or revocation prohibiting such operation is in effect and while the

1 person is not eligible to reinstate his or her driver's license or  
2 driving privilege, other than for a suspension for the reasons  
3 described in (c) of this subsection, is guilty of driving while license  
4 suspended or revoked in the second degree, a gross misdemeanor. This  
5 subsection applies when a person's driver's license or driving  
6 privilege has been suspended or revoked by reason of:

7 (i) A conviction of a felony in the commission of which a motor  
8 vehicle was used;

9 (ii) A previous conviction under this section;

10 (iii) A notice received by the department from a court or diversion  
11 unit as provided by RCW 46.20.265, relating to a minor who has  
12 committed, or who has entered a diversion unit concerning an offense  
13 relating to alcohol, legend drugs, controlled substances, or imitation  
14 controlled substances;

15 (iv) A conviction of RCW 46.20.410, relating to the violation of  
16 restrictions of an occupational ((~~or~~)) driver's license, a temporary  
17 restricted driver's license, or an ignition interlock driver's license;

18 (v) A conviction of RCW 46.20.345, relating to the operation of a  
19 motor vehicle with a suspended or revoked license;

20 (vi) A conviction of RCW 46.52.020, relating to duty in case of  
21 injury to or death of a person or damage to an attended vehicle;

22 (vii) A conviction of RCW 46.61.024, relating to attempting to  
23 elude pursuing police vehicles;

24 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

25 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a  
26 person under the influence of intoxicating liquor or drugs;

27 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

28 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

29 (xii) A conviction of RCW 46.61.527(4), relating to reckless  
30 endangerment of roadway workers;

31 (xiii) A conviction of RCW 46.61.530, relating to racing of  
32 vehicles on highways;

33 (xiv) A conviction of RCW 46.61.685, relating to leaving children  
34 in an unattended vehicle with motor running;

35 (xv) A conviction of RCW 46.61.740, relating to theft of motor  
36 vehicle fuel;

37 (xvi) A conviction of RCW 46.64.048, relating to attempting,  
38 aiding, abetting, coercing, and committing crimes;

1 (xvii) An administrative action taken by the department under  
2 chapter 46.20 RCW; or

3 (xviii) A conviction of a local law, ordinance, regulation, or  
4 resolution of a political subdivision of this state, the federal  
5 government, or any other state, of an offense substantially similar to  
6 a violation included in this subsection.

7 (c) A person who violates this section when his or her driver's  
8 license or driving privilege is, at the time of the violation,  
9 suspended or revoked solely because (i) the person must furnish proof  
10 of satisfactory progress in a required alcoholism or drug treatment  
11 program, (ii) the person must furnish proof of financial responsibility  
12 for the future as provided by chapter 46.29 RCW, (iii) the person has  
13 failed to comply with the provisions of chapter 46.29 RCW relating to  
14 uninsured accidents, (iv) the person has failed to respond to a notice  
15 of traffic infraction, failed to appear at a requested hearing,  
16 violated a written promise to appear in court, or has failed to comply  
17 with the terms of a notice of traffic infraction or citation, as  
18 provided in RCW 46.20.289, (v) the person has committed an offense in  
19 another state that, if committed in this state, would not be grounds  
20 for the suspension or revocation of the person's driver's license, (vi)  
21 the person has been suspended or revoked by reason of one or more of  
22 the items listed in (b) of this subsection, but was eligible to  
23 reinstate his or her driver's license or driving privilege at the time  
24 of the violation, or (vii) the person has received traffic citations or  
25 notices of traffic infraction that have resulted in a suspension under  
26 RCW 46.20.267 relating to intermediate drivers' licenses, or any  
27 combination of (i) through (vii), is guilty of driving while license  
28 suspended or revoked in the third degree, a misdemeanor.

29 (2) Upon receiving a record of conviction of any person or upon  
30 receiving an order by any juvenile court or any duly authorized court  
31 officer of the conviction of any juvenile under this section, the  
32 department shall:

33 (a) For a conviction of driving while suspended or revoked in the  
34 first degree, as provided by subsection (1)(a) of this section, extend  
35 the period of administrative revocation imposed under chapter 46.65 RCW  
36 for an additional period of one year from and after the date the person  
37 would otherwise have been entitled to apply for a new license or have  
38 his or her driving privilege restored; or

1 (b) For a conviction of driving while suspended or revoked in the  
2 second degree, as provided by subsection (1)(b) of this section, not  
3 issue a new license or restore the driving privilege for an additional  
4 period of one year from and after the date the person would otherwise  
5 have been entitled to apply for a new license or have his or her  
6 driving privilege restored; or

7 (c) Not extend the period of suspension or revocation if the  
8 conviction was under subsection (1)(c) of this section. If the  
9 conviction was under subsection (1)(a) or (b) of this section and the  
10 court recommends against the extension and the convicted person has  
11 obtained a valid driver's license, the period of suspension or  
12 revocation shall not be extended.

13 **Sec. 5.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read  
14 as follows:

15 (1)((~~a~~)) Any person licensed under this chapter who is convicted  
16 of an offense relating to motor vehicles for which suspension or  
17 revocation of the driver's license is mandatory, other than vehicular  
18 homicide (~~or~~), vehicular assault, (~~or who has had his or her license~~  
19 ~~suspended, revoked, or denied under RCW 46.20.3101~~) driving while  
20 under the influence of intoxicating liquor or any drug, or being in  
21 actual physical control of a motor vehicle while under the influence of  
22 intoxicating liquor or any drug, may submit to the department an  
23 application for a temporary restricted driver's license. The  
24 department, upon receipt of the prescribed fee and upon determining  
25 that the petitioner is eligible to receive the license, may issue a  
26 temporary restricted driver's license and may set definite restrictions  
27 as provided in RCW 46.20.394. (~~No person may petition for, and the~~  
28 ~~department shall not issue, a temporary restricted driver's license~~  
29 ~~that is effective during the first thirty days of any suspension or~~  
30 ~~revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,~~  
31 ~~for a suspension, revocation, or denial imposed under RCW 46.20.3101,~~  
32 ~~during the required minimum portion of the periods of suspension,~~  
33 ~~revocation, or denial established under (c) of this subsection.~~

34 (~~b~~) An applicant under this subsection whose driver's license is  
35 suspended or revoked for an alcohol-related offense shall provide proof  
36 to the satisfaction of the department that a functioning ignition

1 ~~interlock device has been installed on a vehicle owned or operated by~~  
2 ~~the person.~~

3 ~~(i) The department shall require the person to maintain such a~~  
4 ~~device on a vehicle owned or operated by the person and shall restrict~~  
5 ~~the person to operating only vehicles equipped with such a device, for~~  
6 ~~the remainder of the period of suspension, revocation, or denial.~~

7 ~~(ii) Subject to any periodic renewal requirements established by~~  
8 ~~the department pursuant to this section and subject to any applicable~~  
9 ~~compliance requirements under this chapter or other law, a temporary~~  
10 ~~restricted driver's license granted after a suspension or revocation~~  
11 ~~under RCW 46.61.5055 or 46.20.3101 extends through the remaining~~  
12 ~~portion of any concurrent or consecutive suspension or revocation that~~  
13 ~~may be imposed as the result of administrative action and criminal~~  
14 ~~conviction arising out of the same incident.~~

15 ~~(iii) The time period during which the person is licensed under~~  
16 ~~this section shall apply on a day for day basis toward satisfying the~~  
17 ~~period of time the ignition interlock device restriction is required~~  
18 ~~under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

19 ~~(c) The department shall provide by rule the minimum portions of~~  
20 ~~the periods of suspension, revocation, or denial set forth in RCW~~  
21 ~~46.20.3101 after which a person may apply for a temporary restricted~~  
22 ~~driver's license under this section. In establishing the minimum~~  
23 ~~portions of the periods of suspension, revocation, or denial, the~~  
24 ~~department shall consider the requirements of federal law regarding~~  
25 ~~state eligibility for grants or other funding, and shall establish such~~  
26 ~~periods so as to ensure that the state will maintain its eligibility,~~  
27 ~~or establish eligibility, to obtain incentive grants or any other~~  
28 ~~federal funding.))~~

29 (2)(a) A person licensed under this chapter whose driver's license  
30 is suspended administratively due to failure to appear or pay a traffic  
31 ticket under RCW 46.20.289; a violation of the financial responsibility  
32 laws under chapter 46.29 RCW; or for multiple violations within a  
33 specified period of time under RCW 46.20.291, may apply to the  
34 department for an occupational driver's license.

35 (b) If the suspension is for failure to respond, pay, or comply  
36 with a notice of traffic infraction or conviction, the applicant must  
37 enter into a payment plan with the court.

1 (c) An occupational driver's license issued to an applicant  
2 described in (a) of this subsection shall be valid for the period of  
3 the suspension or revocation.

4 (3) An applicant for an occupational or temporary restricted  
5 driver's license who qualifies under subsection (1) or (2) of this  
6 section is eligible to receive such license only if:

7 (a) Within seven years immediately preceding the date of the  
8 offense that gave rise to the present conviction or incident, the  
9 applicant has not committed vehicular homicide under RCW 46.61.520 or  
10 vehicular assault under RCW 46.61.522; and

11 (b) The applicant demonstrates that it is necessary for him or her  
12 to operate a motor vehicle because he or she:

13 (i) Is engaged in an occupation or trade that makes it essential  
14 that he or she operate a motor vehicle;

15 (ii) Is undergoing continuing health care or providing continuing  
16 care to another who is dependent upon the applicant;

17 (iii) Is enrolled in an educational institution and pursuing a  
18 course of study leading to a diploma, degree, or other certification of  
19 successful educational completion;

20 (iv) Is undergoing substance abuse treatment or is participating in  
21 meetings of a twelve-step group such as Alcoholics Anonymous that  
22 requires the petitioner to drive to or from the treatment or meetings;

23 (v) Is fulfilling court-ordered community service responsibilities;

24 (vi) Is in a program that assists persons who are enrolled in a  
25 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully  
26 employed and the program requires a driver's license;

27 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-  
28 work program; or

29 (viii) Presents evidence that he or she has applied for a position  
30 in an apprenticeship or on-the-job training program for which a  
31 driver's license is required to begin the program, provided that a  
32 license granted under this provision shall be in effect for no longer  
33 than fourteen days; and

34 (c) The applicant files satisfactory proof of financial  
35 responsibility under chapter 46.29 RCW; and

36 (d) Upon receipt of evidence that a holder of an occupational  
37 driver's license granted under this subsection is no longer enrolled in  
38 an apprenticeship or on-the-job training program, the director shall

1 give written notice by first-class mail to the driver that the  
2 occupational driver's license shall be canceled. The effective date of  
3 cancellation shall be fifteen days from the date of mailing the notice.  
4 If at any time before the cancellation goes into effect the driver  
5 submits evidence of continued enrollment in the program, the  
6 cancellation shall be stayed. If the cancellation becomes effective,  
7 the driver may obtain, at no additional charge, a new occupational  
8 driver's license upon submittal of evidence of enrollment in another  
9 program that meets the criteria set forth in this subsection; and

10 (e) The department shall not issue an occupational driver's license  
11 under (b)(iv) of this subsection if the applicant is able to receive  
12 transit services sufficient to allow for the applicant's participation  
13 in the programs referenced under (b)(iv) of this subsection.

14 (4) A person aggrieved by the decision of the department on the  
15 application for an occupational or temporary restricted driver's  
16 license may request a hearing as provided by rule of the department.

17 (5) The director shall cancel an occupational or temporary  
18 restricted driver's license upon receipt of notice that the holder  
19 thereof has been convicted of operating a motor vehicle in violation of  
20 its restrictions, or of a separate offense that under chapter 46.20 RCW  
21 would warrant suspension or revocation of a regular driver's license.  
22 The cancellation is effective as of the date of the conviction, and  
23 continues with the same force and effect as any suspension or  
24 revocation under this title.

25 **Sec. 6.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read  
26 as follows:

27 If an occupational ((~~or~~)) driver's license, a temporary restricted  
28 driver's license, or an ignition interlock driver's license is issued  
29 and is not revoked during the period for which issued the licensee may  
30 obtain a new driver's license at the end of such period, but no new  
31 driver's license may be issued to such person until he or she  
32 surrenders his or her occupational ((~~or~~)) driver's license, temporary  
33 restricted driver's license, or ignition interlock driver's license and  
34 his or her copy of the order, and the director is satisfied that the  
35 person complies with all other provisions of law relative to the  
36 issuance of a driver's license.

1       **Sec. 7.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read  
2 as follows:

3       Any person convicted for violation of any restriction of an  
4 occupational ((~~or~~)) driver's license, a temporary restricted driver's  
5 license, or an ignition interlock driver's license shall in addition to  
6 the immediate revocation of such license and any other penalties  
7 provided by law be fined not less than fifty nor more than two hundred  
8 dollars or imprisoned for not more than six months or both such fine  
9 and imprisonment.

10       NEW SECTION. **Sec. 8.** A new section is added to chapter 46.20 RCW  
11 to read as follows:

12       (1)(a) Beginning January 1, 2009, any person licensed under this  
13 chapter who is convicted of any offense involving the use, consumption,  
14 or possession of alcohol while operating a motor vehicle in violation  
15 of RCW 46.61.502 or 46.61.504, other than vehicular homicide or  
16 vehicular assault, or who has had or will have his or her license  
17 suspended, revoked, or denied under RCW 46.20.3101, may submit to the  
18 department an application for an ignition interlock driver's license.  
19 The department, upon determining that the petitioner is eligible to  
20 receive the license, may issue an ignition interlock driver's license.

21       (b) A person may apply for an ignition interlock driver's license  
22 anytime, including immediately after receiving the notices under RCW  
23 46.20.308 or after his or her license is suspended, revoked, or denied.  
24 A person receiving an ignition interlock driver's license waives his or  
25 her right to a hearing or appeal under RCW 46.20.308.

26       (c) An applicant under this subsection shall provide proof to the  
27 satisfaction of the department that a functioning ignition interlock  
28 device has been installed on all vehicles operated by the person.

29       (i) The department shall require the person to maintain the device  
30 on all vehicles operated by the person and shall restrict the person to  
31 operating only vehicles equipped with the device, for the remainder of  
32 the period of suspension, revocation, or denial. The installation of  
33 an ignition interlock device is not necessary on vehicles owned by a  
34 person's employer and driven as a requirement of employment during  
35 working hours.

36       (ii) Subject to any periodic renewal requirements established by  
37 the department under this section and subject to any applicable

1 compliance requirements under this chapter or other law, an ignition  
2 interlock driver's license granted upon a suspension or revocation  
3 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
4 portion of any concurrent or consecutive suspension or revocation that  
5 may be imposed as the result of administrative action and criminal  
6 conviction arising out of the same incident.

7 (iii) The time period during which the person is licensed under  
8 this section shall apply on a day-for-day basis toward satisfying the  
9 period of time the ignition interlock device restriction is required  
10 under RCW 46.20.720 and 46.61.5055.

11 (2) An applicant for an ignition interlock driver's license who  
12 qualifies under subsection (1) of this section is eligible to receive  
13 a license only if:

14 (a) Within seven years immediately preceding the date of the  
15 offense that gave rise to the present conviction or incident, the  
16 applicant has not committed vehicular homicide under RCW 46.61.520 or  
17 vehicular assault under RCW 46.61.522; and

18 (b) The applicant files satisfactory proof of financial  
19 responsibility under chapter 46.29 RCW.

20 (3) Upon receipt of evidence that a holder of an ignition interlock  
21 driver's license granted under this subsection no longer has a  
22 functioning ignition interlock device installed on all vehicles  
23 operated by the driver, the director shall give written notice by  
24 first-class mail to the driver that the ignition interlock driver's  
25 license shall be canceled. The effective date of cancellation shall be  
26 fifteen days from the date of mailing the notice. If at any time  
27 before the cancellation goes into effect the driver submits evidence  
28 that a functioning ignition interlock device has been installed on all  
29 vehicles operated by the driver, the cancellation shall be stayed. If  
30 the cancellation becomes effective, the driver may obtain a new  
31 ignition interlock driver's license upon submittal of evidence that a  
32 functioning ignition interlock device has been installed on all  
33 vehicles operated by the driver.

34 (4) A person aggrieved by the decision of the department on the  
35 application for an ignition interlock driver's license may request a  
36 hearing as provided by rule of the department.

37 (5) The director shall cancel an ignition interlock driver's  
38 license upon receipt of notice that the holder thereof has been

1 convicted of operating a motor vehicle in violation of its  
2 restrictions, or of a separate offense that under this chapter would  
3 warrant suspension or revocation of a regular driver's license. The  
4 cancellation is effective as of the date of the conviction, and  
5 continues with the same force and effect as any suspension or  
6 revocation under this title.

7 (6) The department shall adopt rules to implement ignition  
8 interlock licensing. The department shall consult with the  
9 administrative office of the courts, the state patrol, the Washington  
10 association of sheriffs and police chiefs, ignition interlock  
11 companies, and any other organization or entity the department deems  
12 appropriate.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW  
14 to read as follows:

15 (1) A pilot program is created for the purpose of monitoring  
16 compliance by persons required to use ignition interlock devices and by  
17 ignition interlock companies and vendors.

18 (2) The department, the state patrol, and the Washington traffic  
19 safety commission shall coordinate to establish a compliance pilot  
20 program that will target at least one county from eastern Washington  
21 and one county from western Washington, as determined by the  
22 department, state patrol, and Washington traffic safety commission.

23 (3) At a minimum, the compliance pilot program shall:

24 (a) Review the number of ignition interlock devices that are  
25 required to be installed in the targeted county and the number of  
26 ignition interlock devices actually installed;

27 (b) Work to identify those persons who are not complying with  
28 ignition interlock requirements or are repeatedly violating ignition  
29 interlock requirements; and

30 (c) Identify ways to track compliance and reduce noncompliance.

31 **Sec. 10.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and  
32 2005 c 183 s 10 are each reenacted and amended to read as follows:

33 Failure to perform any act required or the performance of any act  
34 prohibited by this title or an equivalent administrative regulation or  
35 local law, ordinance, regulation, or resolution relating to traffic  
36 including parking, standing, stopping, and pedestrian offenses, is

1 designated as a traffic infraction and may not be classified as a  
2 criminal offense, except for an offense contained in the following  
3 provisions of this title or a violation of an equivalent administrative  
4 regulation or local law, ordinance, regulation, or resolution:

5 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
6 vehicle while under the influence of intoxicating liquor or a  
7 controlled substance;

8 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

9 (3) RCW 46.10.090(2) relating to the operation of a snowmobile  
10 while under the influence of intoxicating liquor or narcotics or habit-  
11 forming drugs or in a manner endangering the person of another;

12 (4) RCW 46.10.130 relating to the operation of snowmobiles;

13 (5) Chapter 46.12 RCW relating to certificates of ownership and  
14 registration and markings indicating that a vehicle has been destroyed  
15 or declared a total loss;

16 (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by  
17 failure to register a vehicle and falsifying residency when registering  
18 a motor vehicle;

19 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
20 drive;

21 (8) RCW 46.16.160 relating to vehicle trip permits;

22 (9) RCW 46.16.381(2) relating to knowingly providing false  
23 information in conjunction with an application for a special placard or  
24 license plate for disabled persons' parking;

25 (10) RCW 46.20.005 relating to driving without a valid driver's  
26 license;

27 (11) RCW 46.20.091 relating to false statements regarding a  
28 driver's license or instruction permit;

29 (12) RCW 46.20.0921 relating to the unlawful possession and use of  
30 a driver's license;

31 (13) RCW 46.20.342 relating to driving with a suspended or revoked  
32 license or status;

33 (14) RCW 46.20.345 relating to the operation of a motor vehicle  
34 with a suspended or revoked license;

35 (15) RCW 46.20.410 relating to the violation of restrictions of an  
36 occupational ((~~or~~)) driver's license, temporary restricted driver's  
37 license, or ignition interlock driver's license;

1 (16) RCW 46.20.740 relating to operation of a motor vehicle without  
2 an ignition interlock device in violation of a license notation that  
3 the device is required;

4 (17) RCW 46.20.750 relating to (~~assisting another person to start~~  
5 ~~a vehicle equipped with~~) circumventing an ignition interlock device;

6 (18) RCW 46.25.170 relating to commercial driver's licenses;

7 (19) Chapter 46.29 RCW relating to financial responsibility;

8 (20) RCW 46.30.040 relating to providing false evidence of  
9 financial responsibility;

10 (21) RCW 46.37.435 relating to wrongful installation of  
11 sunscreening material;

12 (22) RCW 46.37.650 relating to the sale, resale, distribution, or  
13 installation of a previously deployed air bag;

14 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption  
15 devices;

16 (24) RCW 46.44.180 relating to operation of mobile home pilot  
17 vehicles;

18 ~~((+24+))~~ (25) RCW 46.48.175 relating to the transportation of  
19 dangerous articles;

20 ~~((+25+))~~ (26) RCW 46.52.010 relating to duty on striking an  
21 unattended car or other property;

22 ~~((+26+))~~ (27) RCW 46.52.020 relating to duty in case of injury to  
23 or death of a person or damage to an attended vehicle;

24 ~~((+27+))~~ (28) RCW 46.52.090 relating to reports by repairmen,  
25 storagemen, and appraisers;

26 ~~((+28+))~~ (29) RCW 46.52.130 relating to confidentiality of the  
27 driving record to be furnished to an insurance company, an employer,  
28 and an alcohol/drug assessment or treatment agency;

29 ~~((+29+))~~ (30) RCW 46.55.020 relating to engaging in the activities  
30 of a registered tow truck operator without a registration certificate;

31 ~~((+30+))~~ (31) RCW 46.55.035 relating to prohibited practices by tow  
32 truck operators;

33 ~~((+31+))~~ (32) RCW 46.55.300 relating to vehicle immobilization;

34 (33) RCW 46.61.015 relating to obedience to police officers,  
35 flaggers, or firefighters;

36 ~~((+32+))~~ (34) RCW 46.61.020 relating to refusal to give information  
37 to or cooperate with an officer;

1        ~~((33))~~ (35) RCW 46.61.022 relating to failure to stop and give  
2 identification to an officer;  
3        ~~((34))~~ (36) RCW 46.61.024 relating to attempting to elude  
4 pursuing police vehicles;  
5        ~~((35))~~ (37) RCW 46.61.500 relating to reckless driving;  
6        ~~((36))~~ (38) RCW 46.61.502 and 46.61.504 relating to persons under  
7 the influence of intoxicating liquor or drugs;  
8        ~~((37))~~ (39) RCW 46.61.503 relating to a person under age twenty-  
9 one driving a motor vehicle after consuming alcohol;  
10       ~~((38))~~ (40) RCW 46.61.520 relating to vehicular homicide by motor  
11 vehicle;  
12       ~~((39))~~ (41) RCW 46.61.522 relating to vehicular assault;  
13       ~~((40))~~ (42) RCW 46.61.5249 relating to first degree negligent  
14 driving;  
15       ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of  
16 roadway workers;  
17       ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on  
18 highways;  
19       ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to  
20 secure a load;  
21       ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an  
22 unattended vehicle with the motor running;  
23       ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle  
24 fuel;  
25       ~~((46))~~ ~~RCW 46.37.671 through 46.37.675 relating to signal~~  
26 ~~preemption devices;~~  
27       ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or  
28 attempt to cancel a traffic citation;  
29       ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,  
30 abetting, coercing, and committing crimes;  
31       ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic  
32 offenders;  
33       ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to  
34 obtain a refund;  
35       ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle  
36 business practices, except where that chapter provides for the  
37 assessment of monetary penalties of a civil nature;

1           (~~(52)~~) (53) Chapter 46.72 RCW relating to the transportation of  
2 passengers in for hire vehicles;  
3           (~~(53)~~) (54) RCW 46.72A.060 relating to limousine carrier  
4 insurance;  
5           (~~(54)~~) (55) RCW 46.72A.070 relating to operation of a limousine  
6 without a vehicle certificate;  
7           (~~(55)~~) (56) RCW 46.72A.080 relating to false advertising by a  
8 limousine carrier;  
9           (~~(56)~~) (57) Chapter 46.80 RCW relating to motor vehicle wreckers;  
10          (~~(57)~~) (58) Chapter 46.82 RCW relating to driver's training  
11 schools;  
12          (~~(58)~~) (59) RCW 46.87.260 relating to alteration or forgery of a  
13 cab card, letter of authority, or other temporary authority issued  
14 under chapter 46.87 RCW;  
15          (~~(59)~~) (60) RCW 46.87.290 relating to operation of an  
16 unregistered or unlicensed vehicle under chapter 46.87 RCW.

17           **Sec. 11.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read  
18 as follows:

19           (1) The court may order that after a period of suspension,  
20 revocation, or denial of driving privileges, and for up to as long as  
21 the court has jurisdiction, any person convicted of any offense  
22 involving the use, consumption, or possession of alcohol while  
23 operating a motor vehicle may drive only a motor vehicle equipped with  
24 a functioning ignition interlock. The court shall establish a specific  
25 calibration setting at which the interlock will prevent the vehicle  
26 from being started. The court shall also establish the period of time  
27 for which interlock use will be required.

28           (2) Under RCW 46.61.5055, the court shall order any person  
29 convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent  
30 local ordinance to apply for an ignition interlock driver's license  
31 from the department under section 8 of this act and to have a  
32 functioning ignition interlock device installed on all motor vehicles  
33 operated by the person.

34           (3) The department shall require that, after any applicable period  
35 of suspension, revocation, or denial of driving privileges, a person  
36 may drive only a motor vehicle equipped with a functioning ignition

1 interlock device if the person is convicted of an alcohol-related  
2 violation of RCW 46.61.502 or 46.61.504 or an equivalent local  
3 ordinance.

4 The department may waive the requirement for the use of such a  
5 device if it concludes that such devices are not reasonably available  
6 in the local area. The device is not necessary on vehicles owned by a  
7 person's employer and driven as a requirement of employment during  
8 working hours.

9 The ignition interlock device shall be calibrated to prevent the  
10 motor vehicle from being started when the breath sample provided has an  
11 alcohol concentration of 0.025 or more. The period of time of the  
12 restriction will be as follows:

13 (a) For a person who has not previously been restricted under this  
14 section, a period of one year;

15 (b) For a person who has previously been restricted under (a) of  
16 this subsection, a period of five years;

17 (c) For a person who has previously been restricted under (b) of  
18 this subsection, a period of ten years.

19 **Sec. 12.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read  
20 as follows:

21 (1) The department shall attach or imprint a notation on the  
22 driving record of any person restricted under RCW 46.20.720 or  
23 46.61.5055 stating that the person may operate only a motor vehicle  
24 equipped with a functioning ignition interlock device. The department  
25 shall determine the person's eligibility for licensing based upon  
26 written verification by a company doing business in the state that it  
27 has installed the required device on a vehicle owned or operated by the  
28 person seeking reinstatement. If, based upon notification from the  
29 interlock provider or otherwise, the department determines that an  
30 ignition interlock required under this section is no longer installed  
31 or functioning as required, the department shall suspend the person's  
32 license or privilege to drive. Whenever the license or driving  
33 privilege of any person is suspended or revoked as a result of  
34 noncompliance with an ignition interlock requirement, the suspension  
35 shall remain in effect until the person provides notice issued by a  
36 company doing business in the state that a vehicle owned or operated by  
37 the person is equipped with a functioning ignition interlock device.

1 (2) It is a misdemeanor for a person with such a notation on his or  
2 her driving record to operate a motor vehicle that is not so equipped.

3 **Sec. 13.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to  
4 read as follows:

5 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
6 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
7 and who has no prior offense within seven years shall be punished as  
8 follows:

9 (a) In the case of a person whose alcohol concentration was less  
10 than 0.15, or for whom for reasons other than the person's refusal to  
11 take a test offered pursuant to RCW 46.20.308 there is no test result  
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than one day nor more than one  
14 year. Twenty-four consecutive hours of the imprisonment may not be  
15 suspended or deferred unless the court finds that the imposition of  
16 this mandatory minimum sentence would impose a substantial risk to the  
17 offender's physical or mental well-being. Whenever the mandatory  
18 minimum sentence is suspended or deferred, the court shall state in  
19 writing the reason for granting the suspension or deferral and the  
20 facts upon which the suspension or deferral is based. In lieu of the  
21 mandatory minimum term of imprisonment required under this subsection  
22 (1)(a)(i), the court may order not less than fifteen days of electronic  
23 home monitoring. The offender shall pay the cost of electronic home  
24 monitoring. The county or municipality in which the penalty is being  
25 imposed shall determine the cost. The court may also require the  
26 offender's electronic home monitoring device to include an alcohol  
27 detection breathalyzer, and the court may restrict the amount of  
28 alcohol the offender may consume during the time the offender is on  
29 electronic home monitoring; and

30 (ii) By a fine of not less than three hundred fifty dollars nor  
31 more than five thousand dollars. Three hundred fifty dollars of the  
32 fine may not be suspended or deferred unless the court finds the  
33 offender to be indigent; or

34 (b) In the case of a person whose alcohol concentration was at  
35 least 0.15, or for whom by reason of the person's refusal to take a  
36 test offered pursuant to RCW 46.20.308 there is no test result  
37 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than two days nor more than one  
2 year. Two consecutive days of the imprisonment may not be suspended or  
3 deferred unless the court finds that the imposition of this mandatory  
4 minimum sentence would impose a substantial risk to the offender's  
5 physical or mental well-being. Whenever the mandatory minimum sentence  
6 is suspended or deferred, the court shall state in writing the reason  
7 for granting the suspension or deferral and the facts upon which the  
8 suspension or deferral is based. In lieu of the mandatory minimum term  
9 of imprisonment required under this subsection (1)(b)(i), the court may  
10 order not less than thirty days of electronic home monitoring. The  
11 offender shall pay the cost of electronic home monitoring. The county  
12 or municipality in which the penalty is being imposed shall determine  
13 the cost. The court may also require the offender's electronic home  
14 monitoring device to include an alcohol detection breathalyzer, and the  
15 court may restrict the amount of alcohol the offender may consume  
16 during the time the offender is on electronic home monitoring; and

17 (ii) By a fine of not less than five hundred dollars nor more than  
18 five thousand dollars. Five hundred dollars of the fine may not be  
19 suspended or deferred unless the court finds the offender to be  
20 indigent.

21 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
22 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
23 and who has one prior offense within seven years shall be punished as  
24 follows:

25 (a) In the case of a person whose alcohol concentration was less  
26 than 0.15, or for whom for reasons other than the person's refusal to  
27 take a test offered pursuant to RCW 46.20.308 there is no test result  
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than thirty days nor more than one  
30 year and sixty days of electronic home monitoring. The offender shall  
31 pay for the cost of the electronic monitoring. The county or  
32 municipality where the penalty is being imposed shall determine the  
33 cost. The court may also require the offender's electronic home  
34 monitoring device include an alcohol detection breathalyzer, and may  
35 restrict the amount of alcohol the offender may consume during the time  
36 the offender is on electronic home monitoring. Thirty days of  
37 imprisonment and sixty days of electronic home monitoring may not be  
38 suspended or deferred unless the court finds that the imposition of

1 this mandatory minimum sentence would impose a substantial risk to the  
2 offender's physical or mental well-being. Whenever the mandatory  
3 minimum sentence is suspended or deferred, the court shall state in  
4 writing the reason for granting the suspension or deferral and the  
5 facts upon which the suspension or deferral is based; and

6 (ii) By a fine of not less than five hundred dollars nor more than  
7 five thousand dollars. Five hundred dollars of the fine may not be  
8 suspended or deferred unless the court finds the offender to be  
9 indigent; or

10 (b) In the case of a person whose alcohol concentration was at  
11 least 0.15, or for whom by reason of the person's refusal to take a  
12 test offered pursuant to RCW 46.20.308 there is no test result  
13 indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than forty-five days nor more than  
15 one year and ninety days of electronic home monitoring. The offender  
16 shall pay for the cost of the electronic monitoring. The county or  
17 municipality where the penalty is being imposed shall determine the  
18 cost. The court may also require the offender's electronic home  
19 monitoring device include an alcohol detection breathalyzer, and may  
20 restrict the amount of alcohol the offender may consume during the time  
21 the offender is on electronic home monitoring. Forty-five days of  
22 imprisonment and ninety days of electronic home monitoring may not be  
23 suspended or deferred unless the court finds that the imposition of  
24 this mandatory minimum sentence would impose a substantial risk to the  
25 offender's physical or mental well-being. Whenever the mandatory  
26 minimum sentence is suspended or deferred, the court shall state in  
27 writing the reason for granting the suspension or deferral and the  
28 facts upon which the suspension or deferral is based; and

29 (ii) By a fine of not less than seven hundred fifty dollars nor  
30 more than five thousand dollars. Seven hundred fifty dollars of the  
31 fine may not be suspended or deferred unless the court finds the  
32 offender to be indigent.

33 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
34 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
35 and who has two or three prior offenses within seven years shall be  
36 punished as follows:

37 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to  
2 take a test offered pursuant to RCW 46.20.308 there is no test result  
3 indicating the person's alcohol concentration:

4 (i) By imprisonment for not less than ninety days nor more than one  
5 year and one hundred twenty days of electronic home monitoring. The  
6 offender shall pay for the cost of the electronic monitoring. The  
7 county or municipality where the penalty is being imposed shall  
8 determine the cost. The court may also require the offender's  
9 electronic home monitoring device include an alcohol detection  
10 breathalyzer, and may restrict the amount of alcohol the offender may  
11 consume during the time the offender is on electronic home monitoring.  
12 Ninety days of imprisonment and one hundred twenty days of electronic  
13 home monitoring may not be suspended or deferred unless the court finds  
14 that the imposition of this mandatory minimum sentence would impose a  
15 substantial risk to the offender's physical or mental well-being.  
16 Whenever the mandatory minimum sentence is suspended or deferred, the  
17 court shall state in writing the reason for granting the suspension or  
18 deferral and the facts upon which the suspension or deferral is based;  
19 and

20 (ii) By a fine of not less than one thousand dollars nor more than  
21 five thousand dollars. One thousand dollars of the fine may not be  
22 suspended or deferred unless the court finds the offender to be  
23 indigent; or

24 (b) In the case of a person whose alcohol concentration was at  
25 least 0.15, or for whom by reason of the person's refusal to take a  
26 test offered pursuant to RCW 46.20.308 there is no test result  
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than one hundred twenty days nor  
29 more than one year and one hundred fifty days of electronic home  
30 monitoring. The offender shall pay for the cost of the electronic  
31 monitoring. The county or municipality where the penalty is being  
32 imposed shall determine the cost. The court may also require the  
33 offender's electronic home monitoring device include an alcohol  
34 detection breathalyzer, and may restrict the amount of alcohol the  
35 offender may consume during the time the offender is on electronic home  
36 monitoring. One hundred twenty days of imprisonment and one hundred  
37 fifty days of electronic home monitoring may not be suspended or  
38 deferred unless the court finds that the imposition of this mandatory

1 minimum sentence would impose a substantial risk to the offender's  
2 physical or mental well-being. Whenever the mandatory minimum sentence  
3 is suspended or deferred, the court shall state in writing the reason  
4 for granting the suspension or deferral and the facts upon which the  
5 suspension or deferral is based; and

6 (ii) By a fine of not less than one thousand five hundred dollars  
7 nor more than five thousand dollars. One thousand five hundred dollars  
8 of the fine may not be suspended or deferred unless the court finds the  
9 offender to be indigent.

10 (4) A person who is convicted of a violation of RCW 46.61.502 or  
11 46.61.504 and who has four or more prior offenses within ten years, or  
12 who has ever previously been convicted of a violation of RCW 46.61.520  
13 committed while under the influence of intoxicating liquor or any drug  
14 or RCW 46.61.522 committed while under the influence of intoxicating  
15 liquor or any drug, shall be punished in accordance with chapter 9.94A  
16 RCW.

17 (5)(a) The court shall require any person convicted of a violation  
18 of RCW 46.61.502 or 46.61.504 to apply for an ignition interlock  
19 driver's license from the department under section 8 of this act and to  
20 have a functioning ignition interlock device installed on all motor  
21 vehicles operated by the person.

22 (b) The installation of an ignition interlock device is not  
23 necessary on vehicles owned by a person's employer and driven as a  
24 requirement of employment during working hours.

25 (c) An ignition interlock device imposed under this section shall  
26 be calibrated to prevent a motor vehicle from being started when the  
27 breath sample provided has an alcohol concentration of 0.025 or more.

28 (d) The court may waive the requirement that a person obtain an  
29 ignition interlock driver's license and operate only vehicles equipped  
30 with a functioning ignition interlock device if the court makes a  
31 specific finding in writing that the devices are not reasonably  
32 available in the local area, that the person does not operate a  
33 vehicle, or the person is not eligible to receive an ignition interlock  
34 driver's license under section 8 of this act.

35 (e) When the requirement that a person obtain an ignition interlock  
36 driver's license and operate only vehicles equipped with a functioning  
37 ignition interlock device is waived by the court, the court shall order

1 the person to submit to alcohol monitoring through an alcohol detection  
2 breathalyzer device, transdermal sensor device, or other technology  
3 designed to detect alcohol in a person's system.

4 (f) The period of time for which ignition interlock use or alcohol  
5 monitoring is required will be as follows:

6 (i) For a person who has not previously been restricted under this  
7 section, a period of one year;

8 (ii) For a person who has previously been restricted under (f)(i)  
9 of this subsection, a period of five years;

10 (iii) For a person who has previously been restricted under (f)(ii)  
11 of this subsection, a period of ten years.

12 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
13 46.61.504 committed the offense while a passenger under the age of  
14 sixteen was in the vehicle, the court shall:

15 (a) In any case in which the installation and use of an interlock  
16 or other device is not mandatory under RCW 46.20.720 or other law,  
17 order the use of such a device for not less than sixty days following  
18 the restoration of the person's license, permit, or nonresident driving  
19 privileges; and

20 (b) In any case in which the installation and use of such a device  
21 is otherwise mandatory, order the use of such a device for an  
22 additional sixty days.

23 ~~((+6))~~ (7) In exercising its discretion in setting penalties  
24 within the limits allowed by this section, the court shall particularly  
25 consider the following:

26 (a) Whether the person's driving at the time of the offense was  
27 responsible for injury or damage to another or another's property; and

28 (b) Whether at the time of the offense the person was driving or in  
29 physical control of a vehicle with one or more passengers.

30 ~~((+7))~~ (8) An offender punishable under this section is subject to  
31 the alcohol assessment and treatment provisions of RCW 46.61.5056.

32 ~~((+8))~~ (9) The license, permit, or nonresident privilege of a  
33 person convicted of driving or being in physical control of a motor  
34 vehicle while under the influence of intoxicating liquor or drugs must:

35 (a) If the person's alcohol concentration was less than 0.15, or if  
36 for reasons other than the person's refusal to take a test offered  
37 under RCW 46.20.308 there is no test result indicating the person's  
38 alcohol concentration:

1 (i) Where there has been no prior offense within seven years, be  
2 suspended or denied by the department for ninety days;

3 (ii) Where there has been one prior offense within seven years, be  
4 revoked or denied by the department for two years; or

5 (iii) Where there have been two or more prior offenses within seven  
6 years, be revoked or denied by the department for three years;

7 (b) If the person's alcohol concentration was at least 0.15:

8 (i) Where there has been no prior offense within seven years, be  
9 revoked or denied by the department for one year;

10 (ii) Where there has been one prior offense within seven years, be  
11 revoked or denied by the department for nine hundred days; or

12 (iii) Where there have been two or more prior offenses within seven  
13 years, be revoked or denied by the department for four years; or

14 (c) If by reason of the person's refusal to take a test offered  
15 under RCW 46.20.308, there is no test result indicating the person's  
16 alcohol concentration:

17 (i) Where there have been no prior offenses within seven years, be  
18 revoked or denied by the department for two years;

19 (ii) Where there has been one prior offense within seven years, be  
20 revoked or denied by the department for three years; or

21 (iii) Where there have been two or more previous offenses within  
22 seven years, be revoked or denied by the department for four years.

23 The department shall grant credit on a day-for-day basis for any  
24 portion of a suspension, revocation, or denial already served under  
25 this subsection for a suspension, revocation, or denial imposed under  
26 RCW 46.20.3101 arising out of the same incident.

27 For purposes of this subsection (~~((8))~~) (9), the department shall  
28 refer to the driver's record maintained under RCW 46.52.120 when  
29 determining the existence of prior offenses.

30 (~~((9))~~) (10) After expiration of any period of suspension,  
31 revocation, or denial of the offender's license, permit, or privilege  
32 to drive required by this section, the department shall place the  
33 offender's driving privilege in probationary status pursuant to RCW  
34 46.20.355.

35 (~~((10))~~) (11)(a) In addition to any nonsuspendable and  
36 nondeferrable jail sentence required by this section, whenever the  
37 court imposes less than one year in jail, the court shall also suspend  
38 but shall not defer a period of confinement for a period not exceeding

1 five years. The court shall impose conditions of probation that  
2 include: (i) Not driving a motor vehicle within this state without a  
3 valid license to drive and proof of financial responsibility for the  
4 future; (ii) not driving a motor vehicle within this state while having  
5 an alcohol concentration of 0.08 or more within two hours after  
6 driving; and (iii) not refusing to submit to a test of his or her  
7 breath or blood to determine alcohol concentration upon request of a  
8 law enforcement officer who has reasonable grounds to believe the  
9 person was driving or was in actual physical control of a motor vehicle  
10 within this state while under the influence of intoxicating liquor.  
11 The court may impose conditions of probation that include  
12 nonrepetition, installation of an ignition interlock device on the  
13 probationer's motor vehicle, alcohol or drug treatment, supervised  
14 probation, or other conditions that may be appropriate. The sentence  
15 may be imposed in whole or in part upon violation of a condition of  
16 probation during the suspension period.

17 (b) For each violation of mandatory conditions of probation under  
18 (a)(i), (ii), or (iii) of this subsection, the court shall order the  
19 convicted person to be confined for thirty days, which shall not be  
20 suspended or deferred.

21 (c) For each incident involving a violation of a mandatory  
22 condition of probation imposed under this subsection, the license,  
23 permit, or privilege to drive of the person shall be suspended by the  
24 court for thirty days or, if such license, permit, or privilege to  
25 drive already is suspended, revoked, or denied at the time the finding  
26 of probation violation is made, the suspension, revocation, or denial  
27 then in effect shall be extended by thirty days. The court shall  
28 notify the department of any suspension, revocation, or denial or any  
29 extension of a suspension, revocation, or denial imposed under this  
30 subsection.

31 ~~((11))~~ (12) A court may waive the electronic home monitoring  
32 requirements of this chapter when:

33 (a) The offender does not have a dwelling, telephone service, or  
34 any other necessity to operate an electronic home monitoring system;

35 (b) The offender does not reside in the state of Washington; or

36 (c) The court determines that there is reason to believe that the  
37 offender would violate the conditions of the electronic home monitoring  
38 penalty.

1           Whenever the mandatory minimum term of electronic home monitoring  
2 is waived, the court shall state in writing the reason for granting the  
3 waiver and the facts upon which the waiver is based, and shall impose  
4 an alternative sentence with similar punitive consequences. The  
5 alternative sentence may include, but is not limited to, additional  
6 jail time, work crew, or work camp.

7           Whenever the combination of jail time and electronic home  
8 monitoring or alternative sentence would exceed three hundred sixty-  
9 five days, the offender shall serve the jail portion of the sentence  
10 first, and the electronic home monitoring or alternative portion of the  
11 sentence shall be reduced so that the combination does not exceed three  
12 hundred sixty-five days.

13           ~~((12))~~ (13) An offender serving a sentence under this section,  
14 whether or not a mandatory minimum term has expired, may be granted an  
15 extraordinary medical placement by the jail administrator subject to  
16 the standards and limitations set forth in RCW 9.94A.728(4).

17           ~~((13))~~ (14) For purposes of this section and RCW 46.61.502 and  
18 46.61.504:

19           (a) A "prior offense" means any of the following:

20           (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
21 local ordinance;

22           (ii) A conviction for a violation of RCW 46.61.504 or an equivalent  
23 local ordinance;

24           (iii) A conviction for a violation of RCW 46.61.520 committed while  
25 under the influence of intoxicating liquor or any drug;

26           (iv) A conviction for a violation of RCW 46.61.522 committed while  
27 under the influence of intoxicating liquor or any drug;

28           (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
29 9A.36.050 or an equivalent local ordinance, if the conviction is the  
30 result of a charge that was originally filed as a violation of RCW  
31 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
32 46.61.520 or 46.61.522;

33           (vi) An out-of-state conviction for a violation that would have  
34 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
35 subsection if committed in this state;

36           (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
37 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
38 equivalent local ordinance; or

1 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
3 ordinance, if the charge under which the deferred prosecution was  
4 granted was originally filed as a violation of RCW 46.61.502 or  
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
6 46.61.522;

7 (b) "Within seven years" means that the arrest for a prior offense  
8 occurred within seven years of the arrest for the current offense; and

9 (c) "Within ten years" means that the arrest for a prior offense  
10 occurred within ten years of the arrest for the current offense.

11 NEW SECTION. **Sec. 14.** Sections 2, 4 through 7, and 10 through 13  
12 of this act take effect January 1, 2009.

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